IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 18297 of 2007(C)

PETITIONER:

T.C. VARGHESE, S/O. K.C.CHACKO,
PEPPIS VEETTIL, BLOSSAM ROAD, ELAMKULAM, KOCHI.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS:

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1. THE STAE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HOME AFFAIRS DEPARTMENT, THIRUVANANTHAPURAM.

2. THE CITY POLICE COMMISSIONER,
ERNAKULAM CITY, ERNAKULAM.

3. THE SUB INSPECTOR OF POLICE,
ERNAKULAM CENTRAL POLICE STATION,
ERNAKULAM, KOCHI.

4. SAJU PANAKKAL, S/O. P.V.POULOSE,
PANAKKAL VEETTIL, TOWN HALL ROAD,
ERNAKULAM VILLAGE, KOCHI.

5. SONY P.PANAKKAL, S/O.P.V.POULOSE,
PANAKKAL VEETTIL, TOWN HALL ROAD,
ERNAKULAM VILLAGE, KOCHI.

6. V.M.THOMAS, S/O. MATHUNNI,
VARAYANNUR VEETTIL, CHENNOTHU ROAD,
ELAMKUKLAM VILLAGE, ERNAKULAM, KOCHI.

7. V.M. MATHEW, S/O. MATHUNNI,
VARAYANNUR VEETTIL, LALSALAM ROAD,
PONNURUNNI DESOM, ERNAKULAM, KOCHI.

8. M. POULOSE, S/O. K.V.CHERIAN,
KEERAMKUZHIYIL VEETTIL, PARAMBITHARA,
PANAMPILLY NAGAR, KOCHI.

9. JACOB C.MATHEW, S/O. MATHAI,
34/691, KURUVELIL ROAD, MAMANGALAM KARA,
EDAPPALLY SOUTH VILLAGE, KOCHI.

10. K. BABU MATHEW, SON OF MATHEW KORAH,
MUTHALATHARA HOUSE, CHITTEKADAVU ROAD,
CHOORAKKAD, THEKKUMBHAGOM VILLAGE, THRIPUNITHURA.

11. K.T. THOMAS, SON OF THOMAS,
36/2002, MOTHER THERESA LANE, KALOOR,
ELAMKULAM VILLAGE, ERNAKULAM.

12. CHERIYAN THOMAS, SON OF CHERIYAN,
42/1454, MANATHASSERY HOUSE, MATHAI MANJURAN ROAD,
ERNAKULAM.

13. CHERIYAN KORAH @ NIBU, SON OF CHERIYAN,
UTHRADAM, NETHAJI ROAD, PADIVATTOM,
EDAPPALLY SOUTH VILLAGE, ERNAKULAM.

14. SABU CHERIYAN, SON OF CHERIYAN,
KEERANKUZHIYIL HOUSE, NEAR PADOM BUS STOP,
ELEMKULAM, ERNAKULAM.

15. K.V. STANES, S/O. K.V.VARUTHUNNI,
KANNANAYAKKAL HOUSE, NEAR KUMARANASAN NAGAR
JUNCTION, KALLOOR-KARTHIKADAVU ROAD,KADAVANTHRA,
ERNAKULAM.

16. THOMAS PAUL, S/O. THOMAS,
'DEEPAM HOUSE', MARKET ROAD NORTH END, ERNAKULAM.

17. MAMMAN, S/O. KOSHI,
41/1860, VEEKSHANAM ROAD, PULLEPPADI DESOM,
ELAMKULAM VILLAGE, ERNAKULAM.

18. P.T.JOHN, S/O. THOMAS,
THASHAYIL VEETTIL JANATHA ROAD, VENNALA DESOM,
EDAPPALLY SOUTH, ERNAKULAM.

R1 TO 3 BY GOVT. PLEADER SRI. M.S. BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 18297 of 2007 C

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Dated this the 14th day of June, 2007

JUDGMENT

The petitioner is the defacto complainant in Crime No.523 of 2007 registered, inter alia, under Section 452 Cr.P.C. There is a counter case to this case, which is also pending before the same police station, i.e. Central Police Station, Ernakulam, it is submitted. The petitioner has come to this court with a grievance that the Minister for Home, Vigilance and Tourism has issued a direction to the Commissioner of Police to take necessary action in the matter. That direction was issued on an application submitted by the accused in Crime No.523 of 2007 to the Minister through a political activist with a prayer that the prosecution against them may be withdran.

2. What is the grievance of the petitioner? According to the petitioner, the Minister is unnecessarily sending out a message to the Prosecutor that the case has to be withdrawn. I am unable to accept his argument at all. Whether the case is liable to be withdrawn or not must be considered by the Prosecutor in his independent discretionas a minister of justice. Even if any other person informs him, directs

him and sends a message to him that the case has to be withdrawn, he is not to act on any such initiative. It is for the Prosecutor to apply his independent mind and come to appropriate conclusion on the desirability of taking action under Section 321 Cr.P.C. I have no reason in the facts and circumstances of this case to lightly assume that the Prosecutor will not discharge his onerous responsibility under Section 321 Cr.P.C. Every Prosecutor worth his salt, if acting legally, must consider all materials and take an appropriate decision in the matter. I need only observe that no Prosecutor can choose to decide withdrawal of a case under Section 321 Cr.P.C. at the dictation of any other howsoever high he be. The petitioner can certainly, if any such application for withdrawal is made, appear before the learned Magistrate and raise his objections, if any. As the law now stands, he may not be entitled to receive a notice from the learned Magistrate. But he can certainly approach the learned Magistrate with his objections, if any. Needless to say, the learned Magistrate must consider his objections also before taking a decision on the question of granting consent for withdrawal of the case under Section 321 Cr.P.C.

3. With the above observations, this Writ Petition is dismissed.

4. Hand over copy of the judgment to the learned counsel for the petitioner for production before the Prosecutor concerned. Communicate

copy of the judgment to the learned Chief Judicial Magistrate, Ernakulam also.

(R. BASANT)
Judge

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